

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

FILED 06 MAR 30 10:55 SDC-ORF

CESAR ORLANDO VALLE-LOPEZ,

Civil No. CV 05-1928-BR

Petitioner,

vs.

OPINION AND ORDER

ALBERTO GONZALEZ, United States
Attorney General, **MICHAEL CHERTOFF**,
Secretary, Department of Homeland Security,
A. NEIL CLARK, Regional Director of
United States Immigration and Customs
Enforcement, and **DENNIS MERRILL**,
United States Marshal, District of Oregon,

Respondents.

This action began on December 23, 2005 when the Petitioner, Cesar Orlando Valle-Lopez filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241(CR 1) and Motion for Interim Relief in the form of Conditional Release from Custody (CR 3) seeking his release from the custody of the United States Immigration and Customs Enforcement (ICE), a part of the Department of Homeland Security (DHS).

Petitioner Valle-Lopez claimed that his detention by ICE was unlawful because he was a United States citizen. Since Petitioner Valle-Lopez's claim to United States citizenship appeared to have merit. I therefore ordered his immediate release from the custody of ICE. (CR 4). I subsequently ordered that the parties determine the facts regarding Petitioner Valle-Lopez's citizenship and report back to this Court. (CR 5 & 7). On March 13, 2006, this matter again came before the Court for a status conference with Assistant Federal Public Defender Ellen C. Pitcher

appearing on behalf of Petitioner Valle-Lopez and Assistant United States Attorney (AUSA) Kenneth C. Bauman, appearing on behalf of the Respondents. (CR 8).

Based on the information before this Court, I FIND THAT:

1. Petitioner, Cesar Orlando Valle-Lopez, Immigration number A 44-466-825, was born out of wedlock on June 20, 1977 at Chalatenango, El Salvador. His natural father, Pedro Antonio Delgado, died in El Salvador sometime prior to 1979.
2. Petitioner Valle-Lopez's mother, Blanca Valle-Lopez, then a citizen of El Salvador, came to the United States in 1981. Blanca Valle-Lopez applied for temporary residence under the amnesty provisions of the immigration laws in effect at that time. Blanca Valle-Lopez was granted temporary residency status in 1985 and was granted permanent residence status in 1987. On December 9, 1994, Blanca Valle-Lopez was naturalized as a United States citizen.
3. At the time Petitioner Valle-Lopez's mother, Blanca Valle-Lopez, became a United States citizen, he was 17 years of age and residing with her in the United States. Petitioner had been granted permanent residency on or before January 29, 1994, when Petitioner was 16 years of age.
4. Petitioner Valle-Lopez has derivative United States citizenship based on his mother, Blanca Valle-Lopez's naturalization on December 9, 1994.
5. On October 23, 2000, in Immigration Court, Immigration Judge (IJ) Michael J. Bennett made a factual and legal error about Petitioner Valle-Lopez's derivative United States citizenship. IJ Bennet incorrectly found that Petitioner Valle-Lopez was a citizen of El Salvador who was illegally present in the United States and ordered Petitioner Valle-Lopez removed (deported) from the United States to El Salvador.


6. On February 1, 2006, the United States Department of State issued Petitioner Valle-Lopez a United States passport, passport number 077960569, based on his United States citizenship.

I FURTHER FIND that IJ Bennett's October 23, 2000, order of removal (deportation) is invalid and a legal nullity, because it was based on mistakes of law and fact.

IT IS HEREBY ORDERED that DHS, through CIS, and Immigration Court purge or correct their records to show that Petitioner Cesar Valle-Lopez is a United States citizen.

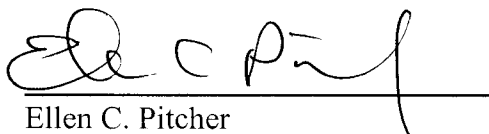
All the relief to which Petitioner Valle-Lopez is entitled to in an action brought within a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 having been granted, this action is HEREBY DISMISSED. A judgment shall issue based on this Opinion and Order.

DATED this 28th day of March, 2006.

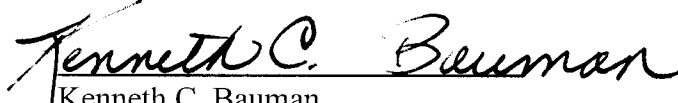


HONORABLE ANNA J. BROWN
United States District Judge

Submitted by:



Ellen C. Pitcher
Assistant Federal Public Defender
Attorney for Petitioner



Kenneth C. Bauman
Assistant United States Attorney
Attorney for Respondents